

DOC. # 5596
ADOPTED 8/16/93

**RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: EXECUTION OF A LAND DISPOSITION AGREEMENT FOR
DISPOSITION PARCEL 24 IN THE FENWAY URBAN RENEWAL AREA
PROJECT NO. MASS. R-115**

WHEREAS, the Boston Redevelopment Authority (hereinafter referred to as the "Authority"), has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified project; and

WHEREAS, the Urban Renewal Plan for the Fenway Urban Renewal Area, Project No. Mass. R-115 (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local, state and federal law; and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion, or national origin; and

WHEREAS, Harvard University has expressed an interest and submitted a satisfactory proposal for the development of Disposition Parcel 24 in the Fenway Urban Renewal Area.

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That the Director is hereby authorized to enter into a Land Disposition Agreement with Harvard setting forth the terms under which the property is to be conveyed to the University; such Land Disposition Agreement to be substantially in the form as the one attached, and to include such other terms and conditions as the Director deems appropriate and in the best interest of the Authority.

CONDITIONAL ASSIGNMENT OF RENT AND OTHER PAYMENTS

ASSIGNMENT, made this ___ day of ____, 1993, by the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of The Commonwealth of Massachusetts ("Assignor") to President and Fellows of Harvard College acting by and through Harvard Medical School, 25 Shattuck Street, Boston, Massachusetts ("Assignee").

1. Reference is made to that certain Land Disposition Agreement of even date herewith (the "LDA"), by and between Assignor and Assignee, pursuant to which Assignor has agreed to sell and convey to Assignee and Assignee has covenanted and agreed to purchase, subject to all of the terms, covenants, and conditions set forth therein, the real and personal property which is the subject thereof. Assignee has, in connection with the transfer of title to the Property (as defined in the LDA) from the Assignor to the Assignee paid Two Million, Four Hundred Thousand Dollars (\$2,400,000) to the assignor (the "Initial Payment").

2. Reference is further made to an Office/Retail Unit Lease, dated as of July 25, 1985 (the "Lease"), between Assignor, as landlord, and Rowes Wharf Associates ("Tenant"), as tenant, for the Office/Retail Unit in that certain condominium known as "The Condominium at Rowes Wharf" which was created by Master Deed dated __, 1985, which was recorded with the Suffolk County Registry of Deeds (the "Registry") in Book __, page __. Notice of the Lease, dated as of July 25, 1985, is recorded with the Registry in Book 11846, page 180 and a confirmatory Notice of Lease, dated June 26, 1987, is recorded with the Registry in Book 13829, page 325. Assignor is presently the fee owner of the Office/Retail Unit and the owner of the landlord's interest under the Lease. Capitalized terms not otherwise defined herein shall have the meanings which are attributed to them in the Lease.

3. Assignor has agreed that in order to secure (i) the prompt repayment of Assignor to Assignee, if and when due, of the Initial Payment to the terms and conditions of LDA, Assignor does hereby assign, transfer, and set over unto Assignee until the "Refundable Amount" (as defined below) has been paid to Assignee in full (i) all rights which Assignor would otherwise have had under the Lease to the rent payable by Tenant to Assignor under Section 3.1 thereof (the "Fixed Rent"), (ii) all rights which Assignor would have had under the Lease to Net Cash Flow, Net Refinancing Proceeds and Net Sales Proceeds payable by Tenant to Assignor under Section 3.2 thereof (the "Additional Rent"), and (iii) the right to collect the Assignor's share of such of the Proceeds, Net Award, and the Purchase Price, as may be applicable (the "Conversion Proceeds").

4. This Assignment shall automatically become operative upon the failure of Assignor to make repayment to Assignee of the Initial Payment to Assignee within thirty days following assignee's demand therefor pursuant to the LDA; however, Assignee shall so notify Tenant of the fact that this Assignment shall have become operative, such notice to be in writing signed by Assignee's legal counsel. Until this Assignment becomes operative, Assignor shall be entitled to all the rents and other payments due it under the Lease.

5. If the Initial Payment is not paid by Assignee to Assignor when due, then interest shall accrue (a) on the balance of the Initial Payment which remain outstanding from time to time and, (b) upon repayment of the Initial Payment in full, on the outstanding balance of the any interest payable by Assignor to Assignee pursuant to this Assignment which remains

outstanding from time to time (compounded annually), in each case at the rate equal to the prime rate of interest of the First National Bank of Boston plus three percent (3%) per annum, until Assignor shall have repaid all of the Initial Payment plus all of the interest which is payable by Assignor to Assignee pursuant to this assignment ("Default Interest"). The Default interest plus the Initial Payment are collectively referred to as the "Refundable Amount."

6. Notwithstanding the foregoing, in the event Assignor shall have the right to receive all or any portion of the Proceeds or the Net Award and/or the Purchase Price prior to the date upon which this Assignment becomes operative, then, notwithstanding that this Assignment shall not be deemed to be operative for any other purposes, such amounts to which Assignor would otherwise have been entitled, up to but not exceeding the amount of the Initial Payment, shall be held by Assignor in escrow.

7. Assignor shall cause all insurance policies carried or required to be carried by Tenant under the Lease to name Assignee as an additional insured. Failure to fulfill this obligation shall constitute a default hereunder and permit Assignee to make this Assignment operative, notwithstanding anything to the contrary hereinabove provided.

8. Assignor hereby authorizes Assignee, its employees and agents, at Assignee's election, after the occurrence of any default by Assignor and without notice or demand of the tenant, to collect thereafter, until Assignee has received an amount equal to the refundable Amount, in the name of Assignor or in Assignee's name as assignee, the Fixed Rent and Additional Rent which has accrued but is unpaid and in arrears at the date of such default, as well as Fixed Rent and Additional Rent thereafter accruing and becoming payable, together with any Conversion Proceeds which shall have accrued or shall thereafter accrue. Assignor further agrees that Assignor will facilitate in all reasonable ways Assignee's collection of said Fixed Rent, Additional Rent and conversion Proceeds, as the case may be and will, upon request by Assignee, execute a written notice to the Tenant and, if appropriate, any insurer and any condemning authority, directing such party to pay such Fixed Rent, Additional Rent or Conversion Proceeds, as the case may be, to Assignee.

9. Assignor covenants and warrants to Assignee that neither Assignor nor any previous owner of the Office/Retail Unit has executed any prior assignment or pledge of the Fixed Rent, Additional Rent and/or any of the Conversion Proceeds. Assignor also hereby covenants and agrees not to collect either Fixed Rent, Additional Rent or Conversion Proceeds in advance, and further agrees not to do any other act which would destroy or impair the benefits to Assignee of this Assignment.

10. Assignor shall not, without having obtained the prior written consent of Assignee in each instance: (a) release the Tenant from any liability under the Lease or otherwise, or consent to, suffer, permit, or waive any act or omission, or consent to, suffer, permit, or waive any act or omission on the part of the Tenant which would otherwise constitute a default under the Lease or alter or amend the terms of the Lease. Furthermore, Assignee shall not agree to any extension or modification of the period of time during which Tenant may exercise its right to purchase Assignor's interest in the Lease Premises pursuant to Article 24 of the Lease.

11. Assignee shall not be obligated to perform or discharge any obligation, duty, or liability under the Lease, and Assignor shall indemnify and hold Assignee harmless from any liability, loss, or damage which it might incur under the Lease, by reason of this Assignment, or from any other claims or demands which may be asserted against Assignee. If Assignee

incurs any such liability, loss, or damage which it might incur under the Lease, by reason of this Assignment, or from any other claims or demands which may be asserted against Assignee. If Assignee incurs any such liability, loss, or damage in the defense of any such claims or demands, Assignor shall, immediately, upon demand, reimburse Assignee for the amount thereof, including costs, expenses, and attorneys' fees.

12. The provisions of this assignment shall be binding upon Assignor and Assignor's legal representatives, successors, and assigns and shall inure to the benefit of the assignee and its successors and assigns. the word 'Assignor' shall be construed to mean any one or more persons or parties who are holders of the legal title or equity of redemption to the Leased Premises.

13. This Assignment shall remain in full force and effect as long as the obligations secured by this assignment remain outstanding and only a discharge of this Assignment executed by Assignee appearing of record in the Registry shall operate as a release of all of Assignee's rights and interest hereunder. When the obligations secured by this Assignment no longer remain outstanding, the Assignor shall request a discharge of this Assignment from the Assignee and the Assignee shall provide a recordable discharge to the Assignor within ten (10) business days of the receipt of the assignor's request.

14. this Assignment shall have the effect of an instrument under seal.

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Its Director, Paul L. Barrett

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE

By: _____

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LAND DISPOSITION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 1993, by and between the Boston Redevelopment Authority and President and Fellows of Harvard College, acting by and through Harvard Medical School.

The parties hereto do hereby agree as follows:

ARTICLE I DEFINITIONS

Section 101: Defined Terms

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

- a. "City" shall mean the City of Boston, Massachusetts.
- b. "Authority" shall mean the Boston Redevelopment Authority, a public body, politic and corporate, organized and existing pursuant to Chapter 121B of the Massachusetts General Laws (Ter. Ed.), as amended, and shall include any successor in interest, whether by act of a party to this Agreement or by operation of law or otherwise.
- c. "Redeveloper" shall mean President and Fellows of Harvard College, acting by and through Harvard Medical School, the Harvard Medical School having an address at 25 Shattuck Street, Boston, Massachusetts and shall include any successor in interest or assign, whether by act of a party to this Agreement or by operation of law or otherwise, but shall not mean mortgagees or holders of loan agreements with respect to the Property (as hereinafter defined).
- d. The "Property" refers to Parcel 24 (now known as 77 Avenue Louis Pasteur) in the Fenway Urban Renewal Project Area as more fully described in Exhibit A attached hereto.
- e. "Harvard" shall mean President and Fellows of Harvard College, acting by and through Harvard Medical School.
- f. "Plan" shall mean the Fenway Urban Renewal Plan, adopted by the Authority on November 24, 1965, and approved by the City Council of the City of Boston on December 20, 1965, and as it may be amended in accordance with the provisions therein contained. The "term of the Plan" shall mean a period of 40 years from and after December 20, 1965. "Plan Area" shall mean the area in the City of Boston to which the said Plan pertains, as indicated by the boundary descriptions and maps therein.

g. "Design Proposal" shall mean the drawings, sketches and plans approved by the Authority showing the general plan, elevations, dimensions, and character of the improvements to be erected, including the type, amount, distribution, and area of the various uses on the Property. The Design Proposal drawings are listed on Exhibit F, attached hereto.

h. "Design Documents" shall mean site plans, plans showing landscaping and facade treatments, elevations and sections, outline specifications, and as available, samples of materials, which have been developed to show the detailed architectural character of the Improvements (as hereinafter defined) on the Property and their relationship to the Design Proposal which has been approved by the Authority.

i. "Improvements" shall mean demolition of the low-rise structures on the Property, renovation and redevelopment of the existing 10-story building (the "Tower"), the creation of parking spaces, landscaping, and other improvements to the Property, all to be constructed by the Redeveloper pursuant to the Design Documents.

j. "Architect" shall mean Davis, Brody & Associates, acting pursuant to a contract for architectural services with respect to the Improvements to be erected on the Property, a copy of which contract has been deposited with the Authority, or such firm or contract as shall be substituted by the Redeveloper, notice of which shall be provided to the Authority within ten days.

k. "HUD" shall mean the Department of Housing and Urban Development or any duly authorized representative thereof.

l. "Director" shall mean the Director of the Boston Redevelopment Authority, or any person designated by him or her to act in his or her behalf.

m. "Deed" shall mean the instrument to be recorded with this Agreement in the Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the Property is conveyed to President and Fellows of Harvard College, a form of which is attached hereto as Exhibit E.

n. "Closing Date" shall mean the date referred to in Section 204 of this Agreement.

o. "Future Development" shall mean improvements to be undertaken at the Property by the Redeveloper (or any party holding title under it) in the future, in addition to the Improvements as defined herein.

p. "Legal Requirements" shall mean all statutes, codes, acts and ordinances, including zoning by-laws and ordinances, building, health and safety codes, historic preservation laws, historic preservation laws and environmental protection laws (and all rules and regulations thereunder), all executive orders and other administrative orders, the terms of all licenses, permits, approvals, variances, certificates, special permits and consents validly issued by any governmental body, and all judgments, decrees, injunctions, and other judicial orders of or by any governmental body, which may at any time be applicable to parts or appurtenances of the Property, or to any condition or use thereof.

ARTICLE II

TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 201: Covenant of Sale

Subject to all of the terms, covenants, and conditions of this Agreement, the Authority agrees to sell and convey and the redeveloper agrees to purchase the Property.

Section 202: Condition of Land to be Conveyed

The Authority and the Redeveloper agree that the Property shall be conveyed in "as is" condition, free and clear of all tenants and occupants.

Section 203: Purchase Price and Payment Therefor

a. The Initial Purchase Price for the Property shall be Twelve Million Dollars (\$12,000,000.00). The Redeveloper shall pay a sum of Two Million, Four Hundred Thousand Dollars (\$2,400,000) (the Initial Payment), upon the transfer of title to the Property from the Authority to Redeveloper on September 15, 1993, which sum shall be credited towards the Initial Purchase Price.

As security for the repayment by the Authority of the Initial Payment, in the event Harvard is entitled to such repayment under the terms of this Agreement, the Authority shall deliver to the Redeveloper, upon execution of this Agreement: a conditional assignment in the form attached hereto as Exhibit G, of the Authority's rights to Base Rent, proceeds of casualty insurance, eminent domain awards, and any other payments to which the Authority is entitled pursuant to a lease dated as of July 25, 1985 between the Authority and Rows Wharf Associates.

b. Upon the issuance of a final adequacy determination for the Improvements by the Massachusetts Executive Office of Environmental Affairs and the elapse of all appeal periods without an appeal having been taken therefrom, the Redeveloper shall pay to the Authority Four Million, Six Hundred Thousand Dollars (\$4,600,000.00), which sum shall be credited towards the Initial Purchase Price. In the event that the Massachusetts Executive Office of Environmental Affairs fails to issue a final

adequacy determination for the Improvements, the Authority shall promptly refund the full amount of the Initial Payment to the Redeveloper upon the Redeveloper's retransfer of the Property to the Authority.

c. A sum of Five Million Dollars (\$5,000,000.00) shall be paid by the Redeveloper to the Authority on September 26, 1994; which sum shall be credited towards the Initial Purchase Price.

d. In addition to the payments set forth in (a) through (c) above, a sum in the amount of up to Four Million Dollars (\$4,000,000.00) shall be paid by the Redeveloper as further consideration for the Property (the "Contingent Price"), subject to the terms and conditions set forth below. The Contingent Price shall be paid by means of an unsecured, non-interest bearing note in the form attached hereto as Exhibit B (the "Redeveloper Note").

e. The Redeveloper shall be obligated to pay the Contingent Price only upon the following terms and conditions:

- (i) If the Redeveloper shall initiate any Approvals Action (as defined in the Redeveloper Note) for additional development on the Property (any such application being a "Redeveloper Application") at any time, but within thirty-six months after the earlier to occur of: (A) the issuance of a Certificate of Occupancy for the renovated Tower portion of the Property; or (B) eighteen months after the Closing Date (the "Measuring Date"), the Redeveloper may satisfy the Redeveloper Note in full with the payment of Two Million, Five Hundred Thousand Dollars (\$2,500,000.00) to the Authority, such amount to be paid on the earlier to occur of: (x) the date Approvals Action (as defined in the Redeveloper Note) occurs; or (y) forty-two months from the Measuring Date; provided, however, that the Redeveloper shall have the right to further delay its \$2,500,000.00 payment to the Authority until Authority Approvals Action occurs.
- (ii) If the Redeveloper shall initiate any Redeveloper Application later than thirty-six months but earlier than seventy-three months after the Measuring Date, the Redeveloper may satisfy the Redeveloper Note in full with the payment of Three Million, Two Hundred Fifty Thousand Dollars (\$3,250,000.00) to the Authority, such amount to be paid on the earlier to occur of: (x) the date Approvals Action occurs; or (y) seventy-three months from the Measuring Date; provided, however, that the Redeveloper shall have the right to further delay its \$3,250,000 payment to the Authority until Authority Approvals Action occurs.

- (iii) If the Redeveloper shall initiate any Redeveloper Application later than seventy-two months from the Measuring Date, the Redeveloper may satisfy the Redeveloper Note in full with the payment of Four Million Dollars (\$4,000,000.00) to the Authority when Authority Approvals Action occurs.
- (iv) In any event, the Redeveloper shall satisfy the Redeveloper Note in full with the payment of Four Million Dollars \$4,000,000.00) to the Authority when Authority Approvals Action occurs.
- (v) The Redeveloper Note shall become null and void, and the parties agree to execute such instruments and documents as are necessary to evidence the nullification, if, by the end of the seventh year after the Measuring Date, either the Redeveloper has not initiated a Redeveloper Application for Approvals Action, or such Approvals Action has not become final and non-appealable.

g. Any payments due to the Authority from the Redeveloper pursuant to subsections (a) through (f) above shall be made by certified or bank check made payable to the Authority.

h. The provisions of this Section shall survive delivery of the Deed.

Section 204: Time of Sale and Conveyance

a. The sale and conveyance and delivery of possession of the Property and the purchase of the same by the Redeveloper, shall take place on a date as provided in Section 204(c), at the office of the Authority at City Hall, Boston, Massachusetts.

b. The parties agree that time is of the essence in this transaction.

c. The Closing Date shall be September 15, 1993.

d. The Authority agrees to cooperate with the Redeveloper with respect to securing permits and approvals for the Improvements and any Future Development on the Property. The Redeveloper shall prepare the Draft and Final Environmental Impact Reports as required by the Massachusetts Executive Office of Environmental Affairs at Redeveloper's sole cost and expense. The Authority shall cooperate with the Redeveloper in attempting to obtain the final adequacy determination from the Massachusetts Executive Office of Environmental Affairs.

e. The parties acknowledge that the Massachusetts Executive Office of Environmental Affairs ("EOEA") has required preparation of an Environmental Impact Report in connection with the Redeveloper's acquisition and redevelopment of the Property. Notwithstanding the provisions of this Section or of any other

section of this Agreement, the Redeveloper may elect to terminate this Agreement if the requirements of the final adequacy determination issued by EOEA are not satisfactory to the Redeveloper and upon termination the Redeveloper shall reconvey the Property to the Authority.

The Redeveloper's termination of this Agreement pursuant to this Section shall be effective only upon written notice to the Authority within ten (10) days after the receipt by the Redeveloper of the final adequacy determination. Promptly after receipt of such Redeveloper notice, the Authority shall refund the full amount of the Initial Payment to the Redeveloper upon receipt of transfer deed conveying all right, title and interest back to the Authority. If the Authority fails to refund said Initial Payment upon reconveyance, the Redeveloper may record Exhibit G in the Suffolk Registry of Deeds and implement the repayment of the Initial Payment in accordance with the terms of said Exhibit G.

f. The provisions of this Section shall survive delivery of the Deed.

Section 205: Title and Instrument of Conveyance

The sale and conveyance shall be by Quitclaim Deed of good and marketable fee simple title, free and clear of all liens and encumbrances, including any and all rights others may have had in Board of Survey Street No. 217, but subject to and with the benefit of the Plans and those conditions, covenants, and restrictions set forth in this Agreement as covenants running with the Property.

Section 206: Related Agreements

a. The parties acknowledge, and each agrees to execute, as appropriate, agreements related to the redevelopment of the Property, as follows:

1. Development Impact Project ("DIP") Agreement;
2. First Source Agreement; and
3. Cooperation Agreement.

The DIP Agreement shall detail the Redeveloper's obligation to make housing and job creation grants as referenced in Sections 26A and 26B of the Boston Zoning Code, and shall be executed subsequent to the execution of this Agreement and prior

Section 206: Federal Tax Stamps and Other Closing Costs

The Redeveloper shall pay the costs of any Federal or State documentary tax stamps which shall be required, and the cost of recording the Deed, this Agreement, and all other instruments and plans to be recorded together with the Deed.

Section 207: Adjustments

The Authority shall pay all sewer charges and water charges and other assessments or charges allocable with respect to any period before delivery and conveyance to the Redeveloper of the Deed hereunder. Sewer, other assessments and water charges allocable with respect to any period after delivery to the Redeveloper of a Deed hereunder shall be paid by the Redeveloper. The provisions of this Section shall survive delivery of the Deed.

Section 208: Project Financing

Harvard represents and warrants that it has the financial resources to acquire the Property and to undertake to its completion, the redevelopment of the Property as a medical research facility. The Authority hereby acknowledges that Harvard has previously provided to the Authority satisfactory evidence of Harvard's financial capacity to redevelop the Property as contemplated in this Agreement.

Notwithstanding the foregoing, however, or anything to the contrary contained in this Agreement, Harvard may, in its sole discretion, elect to seek private or public financing for the acquisition and redevelopment of the Property, or for any aspect thereof.

Section 209: Related Agreements

a. The parties acknowledge, and each agrees to execute, as appropriate, agreements related to the redevelopment of the Property, as follows:

1. Development Impact Project ("DIP") Agreement;
2. First Source Agreement; and
3. Cooperation Agreement.

The DIP Agreement shall detail the Redeveloper's obligation to make housing and job creation grants as referenced in Sections 26A and 26B of the Boston Zoning Code, and shall be executed subsequent to the execution of this Agreement and prior

to the Closing Date. Harvard shall state in the DIP Agreement that it will commit to payment of all jobs linkage payments which it pays in connection with this project in a single payment on the initial linkage payment date and will, as provided in the Job Creation Regulation, make said payment to any existing or proposed job training initiatives of the Fenway-Mission Hill community. The First Source Agreement shall detail the Redeveloper's commitment to seek qualified employees who are Boston residents to fill certain job vacancies and new entry level positions at the Property as it is redeveloped. The First Source Agreement, to be executed by the Redeveloper and the City of Boston's Office of Jobs and Community Services, shall be executed subsequent to the execution of this Agreement and prior to the Closing Date. The Cooperation Agreement shall describe the community benefits which the Redeveloper elects to provide in connection with redevelopment of the Property, and shall be executed prior to or simultaneously with the execution of this Agreement, as provided for in Section 204(c) hereof.

b. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

c. The Redeveloper agrees that Redeveloper shall, at Redeveloper's cost, move three pieces of statuary from the Building on Parcel 24 to a location within the City of Boston designated by the Authority. Redeveloper shall have the moving done by a qualified rigger such as Shaughnessy and Ahern but shall have no liability whatsoever for any damage caused during the move or any operations preparatory to the move. Furthermore, Redeveloper shall have no liability or responsibility for making ready the location to which the statuary is to be moved. The Redeveloper shall have no obligation to move or preserve the statuary unless the Closing Date has occurred and the Authority has at least 30 days prior to time Redeveloper commences the Improvements provided Redeveloper with written instructions as to the location to which the statuary is to be moved and made ready the site to receive the statuary.

ARTICLE III

RESTRICTIONS AND CONTROLS UPON REDEVELOPMENT

Section 301: Restrictions on Use; Use and Dimensional Controls

a. Harvard covenants for itself, and for any party holding title under it, that Harvard and any party holding title under it shall:

1. Devote the Property only to and in accordance with medical or institutionally related activities, including

not-for-profit and for-profit medical research laboratories and parking; and other Permitted Uses as defined in Section 301(b); and

2. Comply with all applicable federal, state and local laws governing discrimination on the basis of race, color, sex, religion or national origin in the sale, lease or rental or in the use or occupancy of the Property or any Improvements erected or to be erected thereon, or any part thereof.

b. The use and dimensional controls on the Property shall be those set forth in Table B of the Plan as amended as of the date hereof. Table B of the Plan imposes the following use and dimensional controls on the Property (referenced in Table B as Parcel No. 24), any inconsistent provisions of the Boston Zoning Code notwithstanding:

Permitted Land Use: Institutional.

Maximum Floor Area: AA*.

Planning and Design Requirements: B**.

* Subject to Authority Approval.

** Development shall be consistent and compatible with surrounding development respecting material, form and scale, subject to Authority approval.

For the purpose of this Agreement and the Plan as it governs the Property and the land within the U* District, as shown on Exhibit C, institutional uses shall be defined as follows: research and scientific laboratories, whether non-profit or for-profit or combinations thereof; the keeping of animals; medical offices; patient care facilities; parking for 561 cars within existing parking areas and in parking areas to be created as part of the Improvements and as shown on Exhibit D, which parking shall serve uses located at the Property and in other locations in the Longwood Medical Area (as defined in Article 27M of the Boston Zoning Code); and customary accessory uses thereto. The current parking space utilization and parking facilities shown as "Area A" and "Area B" on the Site Plan attached hereto as Exhibit D are specifically permitted by the Authority. The Redeveloper may change the parking configuration from time to time by shifting spaces among parcels within the U* District, subject to the maximum limitation on the number of parking spaces referred to above. The maximum floor area ratio for the land within the U* District shown on Exhibit C shall be 3.0, as calculated pursuant to the Boston Zoning Code (including Section 2-1(26) therein), provided

that construction of the Improvements shall be subject to:
(i) design review by the Authority to ensure consistency with the planning and design requirements referenced above in this Section 301(a); and (ii) the issuance of a consistency finding by the Authority to ensure that the Improvements conform to the Plan's use and development controls. Subject to the Redeveloper's submitting Design Documents for renovation of the Tower portion of the Property, the Authority hereby approves the Design Proposal for the Improvements as being consistent with the Plan's use and dimensional controls and this Agreement.

c. It is intended and agreed that the Deed shall reference this Agreement, and that the covenants provided in subsection (a) of this Section shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Authority, its successors and assigns, the City of Boston, and in the case of the covenant provided in subparagraph (2) of subsection (a), the United States against the Redeveloper, its successors and assigns, and every successor in interest to the Property or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the covenants provided in subparagraph (1) of subsection (a) shall remain in effect for the term of the Plan, or until such date thereafter to which such term may be extended by proper amendment of the Plan. The covenant provided in subparagraph (2) of subsection (a) shall remain in effect without limitation as to time. The terms "uses specified in the Plan" and "land use" referring to provisions of the Plan, or similar language, in this Agreement shall include the requirements or restrictions of the Plan pertaining to such land.

d. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 302: Improvements and Submission of Plans

a. The Redeveloper shall undertake renovations to the Tower portion of the Property, to enable said building to be used for the uses set forth in Section 301 herein, said renovation to be undertaken in accordance with the Design Documents and the applicable standards and controls of the Plan. The Authority acknowledges that it has approved the Design Proposal shown on the drawings referenced in Exhibit F to this Agreement. The review by the Authority of the Design Documents shall be limited to the conformity of open spaces, landscaping and the external appearance of the Improvements with the Design Proposal.

b. The Redeveloper shall not apply for a building permit for the construction of the Improvements to be erected on the Property without the prior certification of the Authority that the construction work to be done or completed as set forth in the permit application is in accordance with the Design Documents approved by the Authority. No work shall be done on the construction of the Improvements to be erected on the Property unless such work substantially conforms with such approved Design Documents, except and only to the extent that material modifications thereof have been requested by the Redeveloper in writing and have been approved in writing by the Authority, such approval not to be unreasonably withheld or delayed. Authority failure to object to such a modification request within fifteen (15) days of receipt of such request shall be deemed approval of such modification request.

In the event the Redeveloper shall fail to comply with the foregoing requirements, the Authority may, within a reasonable time after discovery thereof by the Authority, direct in writing that the Redeveloper so modify or reconstruct such portion or portions of the Improvements erected or being erected on the Property as are not in conformance with the approved Design Documents or any approved or deemed approved modifications thereof as to bring them into conformance therewith. The Redeveloper shall promptly comply with such a directive. In addition to any other remedies available under this Agreement, the Authority may enforce the provisions of this subsection 302(b) by an action in a court of appropriate jurisdiction to compel specific performance.

It is agreed that upon delivery of the Deed and prior to commencement of construction of the Improvements, the Redeveloper shall have the right to demolish the existing low-rise and plaza portions of the Property as well as the interior of the Tower, it being acknowledged by both parties that such demolition may begin prior to the Redeveloper's receipt of the Authority's approval of the Design Documents.

c. In submitting all plans and specifications to the Authority for its approval, the Redeveloper shall consider and take into account the planning and design objectives set forth in the Plan and in the Design Proposal, and the Authority shall pursue such objectives in its review of and action upon the plans and specifications so submitted.

d. Intentionally Omitted.

e. No sign shall be erected or placed on the exterior of any building on the Property, nor on any portion of the Property which is not enclosed within a building, unless the location, design, size, shape, form and lighting of such sign shall have been approved by the Authority in writing.

f. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 303: Time for Commencement and Completion of Construction

a. The Redeveloper shall begin demolition activities on the Property within one hundred eighty (180) days after delivery of the Deed to the Redeveloper.

b. The Redeveloper shall commence preparation of plans and specifications for the Improvements other than the so-called tenant fit-out work and diligently prosecute completion of the same, taking into account the complexity of the Improvements and the fact that such plans and specifications will require the approval of all users of the Improvements and, in any event, the Redeveloper shall, subject to the provisions of Section 303 f, submit the Design Documents to the Authority for approval within two years after delivery of the Deed. The Redeveloper shall diligently prosecute to completion the renovation of the Improvements on the Property other than the tenant fit-out work, and shall bring such renovation work to the point where they shall be deemed completed pursuant to Section 304(a) herein not later than four years after the date of approval of the Design Documents or as may be extended by permission of the Authority, which permission shall not be unreasonably withheld or delayed.

c. The Redeveloper shall submit to the Authority for its approval a detailed estimated progress schedule at the time construction is begun in a format generally used in the construction of buildings.

d. Prior to the sale and conveyance and delivery of possession of the Property, the Authority shall permit the Redeveloper access thereto, whenever and to the extent necessary to carry out the purposes of this Agreement and in order to conduct any and all such inspections as the Redeveloper deems necessary or desirable to prepare the geotechnical report referred to in Section 204(b)(iv), and to prepare the design plans and specifications referred to herein.

e. It is intended and agreed that the agreements and covenants contained in this Section 303 with respect to the beginning and completion of the Improvements on the Property shall be covenants running with the land. This subsection shall not, however, apply against a mortgagee of the Redeveloper, unless the mortgagee shall elect to complete the Improvements as permitted in Section 403, in which case the extension provisions of that Section shall apply.

f. Should changed circumstances make redevelopment of the Property as a medical research facility economically infeasible in the reasonable judgment of the Redeveloper, the Redeveloper may submit to the Authority for its approval a revised proposal for redevelopment of the Property, including a revised Design Proposal and a revised development schedule. When approved by the Authority, the revised Design Proposal shall become the Design Proposal, the improvements contemplated in the revised project proposal shall become the Improvements, and the revised development schedule shall be substituted for the schedule set forth in Section 303(b) above.

g. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 304: When Improvements Completed

a. The renovation work related to the Improvements on the Property shall be deemed completed for the purposes of this Agreement when the Improvements other than the tenant fit-out work have been completed as certified by the Architect, and shall incontestably be deemed completed for the purposes of this Agreement upon the issuance of a Certificate of Completion by the Authority.

b. Promptly after completion of the Improvements in accordance with the provisions of this Agreement, and in no event later than thirty (30) days after such completion and written notice by the Redeveloper, the Authority will furnish the Redeveloper with an appropriate instrument so certifying. Such certification by the Authority shall be, and it shall be so provided in the Deed and in the certification itself, a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Deed with respect to the obligations of the Redeveloper to construct the Improvements, provided that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements or any part thereof, or the purchase of the Property.

c. With respect to such individual parts or parcels of the Property which the Redeveloper is authorized by Section 401 of this Agreement to convey or lease, the Authority will also, upon completion of the Improvements relating to any such part or parcel, certify to the Redeveloper that such Improvements have been made in accordance with the provisions of this Agreement. Such certification shall mean and provide (and the Deed shall so state): (1) that any party purchasing or leasing such individual part or parcel pursuant to the authorization herein

contained shall not (because of such purchase or lease) incur any obligation with respect to the construction of the Improvements relating to such part or parcel or to any other part or parcel of the Property; and (2) that neither the Authority nor any other party shall thereafter have or be entitled to exercise with respect to any such individual part or parcel so sold (or in the case of lease, with respect to the leasehold interest) any rights or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Property as a result of a default in or breach of any provisions of this Agreement or the Deed by the Redeveloper or any successor in interest or assign, unless (i) such default or breach be by the purchaser or lessee, or any successor in interest or assign of or to such individual part or parcel with respect to the covenants and obligations required to be assumed pursuant to Section 401 of this Agreement, and (ii) the right, remedy, or control relates to such default or breach. All certifications provided for in this Section shall be in such form as will enable them to be recorded in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section, the Authority shall, within thirty days after receipt by the Authority of a written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the Improvements in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts will be necessary, in the opinion of the Authority, for the Redeveloper to undertake or to perform in order to obtain such certification.

d. The Redeveloper agrees that the Authority shall be under no obligation to issue a Certificate of Completion until such time as the Authority has had a reasonable opportunity to inspect the Improvements constructed pursuant to the provisions of this Agreement, the approved Design Documents, and any approved material modifications thereof, provided however, that the Authority shall not be required to make an inspection hereunder unless the Redeveloper has requested in writing that the Authority issue a Certificate of Completion.

e. The Redeveloper and the Authority agree that the procedures outlined in Sections 301, 302 and this Section shall govern construction of any Future Development by the Redeveloper on the Property.

f. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 305: Prompt Payment of Obligations

Harvard shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Redeveloper or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the Improvements required by this Agreement to be constructed upon the Property.

Section 306: Non-Discrimination in Employment

Harvard agrees that solely in the construction of the Improvements at the Property performed by Harvard in accordance with the provisions of this Agreement:

a. Harvard will not discriminate against any construction worker or applicant for construction work employment because of race, color, sex, religion, sexual orientation, or national origin. Harvard will take affirmative action to ensure that applicants for construction work employment are employed, and that construction work employees are treated during employment, without regard to their race, color, religion, sexual orientation, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Harvard agrees to post in conspicuous places, available to construction work employees and applicants for construction work employment, notices to be provided by the Authority setting forth the provisions of this non-discrimination clause.

b. Harvard will, in all solicitations or advertisements for construction work employees placed by or on behalf of Harvard, state that all qualified applicants for construction work will receive consideration for such employment without regard to race, color, religion, sexual orientation, sex, or national origin.

c. Harvard will send to each labor union or representative of workers with which Harvard has a collective bargaining agreement or other contract of understanding, a notice, to be provided by the Authority advising the said labor union or worker's representative of Harvard's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to construction work employees and applicants for construction work employment.

d. Harvard will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and with the rules, regulations and relevant orders of the Secretary of Labor.

e. Harvard will use good faith efforts to comply with the Boston Residents Jobs Policy, Chapter 30 of the Ordinances of 1983.

Such good faith efforts shall consist of the following:

i. Harvard shall incorporate in every general construction contract or construction management agreement an enumeration of the worker goals participation goal set forth in the Boston Residents Jobs Policy, and shall impose a responsibility upon the contractor to pursue the efforts enumerated in this subsection (e), incorporate such worker participation goal in all subcontracts, and impose upon all subcontractors the obligation to pursue such efforts; and

ii. Authority, Harvard, contractor, and every sub-contractor shall each designate an individual to serve as the affirmative action officer for the purpose of carrying out the efforts to achieve the worker participation goals set forth in the Boston Resident Jobs Policy; and

iii. Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of the Authority, Harvard, contractor, and each subcontractor then selected shall hold a pre-job conference with appropriate union representatives of the construction trade unions for the purpose of reviewing the worker participation goal applicable to the Improvements and the staffing requirements for construction activity over the life of the construction period; and

iv. Each request for qualified construction workers made by a person involved in the construction of the Improvements to a union hiring hall or business agent shall contain a recitation of such worker participation goals and a request that qualified persons for construction positions with respect to the Improvements be selected in light of such goals; and

v. All persons applying directly to the contractor or to any subcontractor for employment in construction of the Improvements and who are not employed by the party to whom application is made, will be referred to the affirmative action officer of the Authority and a written record of such referral shall be made, a copy of which shall be sent to such officer.

vi. Harvard shall make reasonable efforts to encourage participation of Minority Business Enterprises and Women Business Enterprises in the construction work it undertakes at the Property. The terms "Minority Business Enterprises" and "Women Business Enterprises" shall be as defined in an Executive Order issued by the Mayor of the City of Boston dated December 17, 1987.

f. Harvard will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Redeveloper's hiring records with respect to construction of the Improvements, by the Authority, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

g. In the event of Harvard's noncompliance with the non-discrimination clauses of this Section, the Authority may pursue any available remedy at law.

h. Harvard will include the provisions of the foregoing Paragraphs (a) through (e) of this Section in every employment contract with a contractor or subcontractor, whether union or nonunion, and in every other contract related to construction of the Improvements, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each such contractor or subcontractor, as the case may be. Harvard will take such action with respect to any construction contract or subcontract as the Authority or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Harvard becomes involved in or is threatened with litigation with a subcontractor as a result of such directive by the Authority or HUD, Harvard may request the United States to enter into such litigation to protect the interest of the United States.

For the purpose of including such provisions in any construction contract or subcontract, as required hereby, the first three lines of this Section shall be changed to read: "During the performance of this Contract, the Contractor/Subcontractor agrees as follows:" and the term "Harvard" as it appears throughout this Section shall be changed to "Contractor" or "Subcontractor", as the case may be.

i. Harvard shall not be required, however, to take any action which would be inconsistent with: (A) Harvard's affirmative action plans; (B) Harvard's obligations under Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967; (C) the provisions of collective bargaining agreements applicable to Harvard's employees; (D) the provisions of applicable employment policies and agreements applicable to Harvard's employees; or (E) applicable federal or state employment, anti-discrimination, or equal employment opportunity laws.

j. Any occupant (as defined in Section 401(b) of this Agreement) performing construction work of the Improvements shall comply with the provisions of this Section 306 to the same extent as Harvard is so obligated with respect to construction work that it performs related to the Improvements; provided, however, that no party shall be liable for breaches of violations of this Section 306 by parties other than the party committing such breach or default.

Section 307: Access to the Property by Authority and City Personnel

Upon prior reasonable notice, the Redeveloper shall from time to time until the expiration of the term of the Plan, at all reasonable hours, give to the duly authorized representatives of the Authority, the City, and the United States of America, access for inspection purposes to any and all of the Improvements constructed on the Property by the Redeveloper, and to all open areas surrounding the same; provided that any such inspections pursuant to this Section shall take place only in the presence of a representative of the Redeveloper and the Authority shall indemnify the Redeveloper against any cost, loss or damage to the Property or to persons other than representatives of the Redeveloper, that may be occasioned by such inspections.

ARTICLE IV

TRANSFER AND MORTGAGE OF REDEVELOPER'S INTEREST

Section 401: General Terms Relating to Transfer of Interest in Property by Redeveloper

a. Prior to completion of the renovation of the core and shell of the Tower in accordance with Section 304 of this Agreement, the entire interest of the Redeveloper shall not be transferred, or caused or suffered to be transferred, except an involuntary transfer as provided in Section 402 hereof, without the written approval of the Authority. Parties or entities to which any such transfer may take place as provided for herein are referred to hereinafter as "transferees."

b. The Redeveloper agrees that it will not, after delivery of the Deed and prior to the completion of the renovation of the

core and shell of the Tower, make or suffer to be made, any assignment, lease, or any other transfer of a portion of its interest in the Property or in this Agreement, except as provided in Section 402, and except that the Redeveloper may: (i) enter into a ground lease for all or any portion of the Property; (ii) lease or license parking spaces to users; (iii) convert the Tower portion of the Property to the cooperative form of ownership, or to the condominium form of ownership by means of a master deed; or (iv) sell or lease individual condominium or rental units, or entire floors within the Improvements. All such lessees, users, licensees, condominium purchasers, renters and cooperative stockholders shall be referred to hereafter as "occupants."

c. The Redeveloper shall not transfer, or cause or suffer to be transferred (except an involuntary transfer as provided in Section 402), its entire interest in the Property as provided in Section 401(a) unless the Redeveloper shall have complied with the following conditions:

i. The transferee or transferees shall have been approved as such in writing by the Authority, which approval shall not be unreasonably withheld or delayed. Notwithstanding the preceding sentence, written Authority approval shall not be required for transfers to affiliated institutions of Harvard, including, without limitation, the following affiliated hospitals of Harvard: Beth Israel Hospital, Brigham and Women's Hospital, Children's Hospital, Dana-Farber Cancer Institute, Joslin Diabetes Center, Massachusetts General Hospital, New England Baptist Hospital, and New England Deaconess Hospital; provided however, that prior to the completion of the renovation of the core and shell of the Tower, Redeveloper transfers to affiliated institutions of Harvard which comprise in the aggregate, more than 50% of the leasable area of the Tower, shall require prior written approval of the Authority; and

ii. The transferee or transferees, by valid instrument in writing satisfactory to the Authority, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the benefit of the Authority, all obligations of any person or persons, including the Redeveloper, to begin, complete, and/or maintain and operate, as applicable, the Improvements and all obligations of the Redeveloper provided for in this Agreement, including the obligations of performance in accordance with the Plan; provided, that: the fact that any transferee of, or any other successor in interest

whatsoever to the Property, or any part thereof, shall for whatever reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) relieve or except such transferee or successor of or from obligations, conditions, or restrictions, or deprive or limit the Authority of or with respect to any rights or limitations or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of or change with respect to ownership, possession, or control shall operate legally or practically to deprive the Authority of or limit the Authority with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the Authority would have, had there been no such transfer or change. In the event of any such transfer without such assumption of obligations, the Redeveloper shall pay to the Authority the expenses and costs of any actions or proceedings instituted to enforce all such obligations, conditions, and restrictions, and all of the Authority's said rights, remedies, and controls as against such transferee. Notwithstanding anything herein to the contrary, no such transfer or approval thereof by the Authority shall be deemed to relieve the Redeveloper or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements from any of its obligations with respect thereto.

d. In the event of any violation by such a transferee of the Property of any obligation assumed or required to be assumed under Subsection (c) of this Section, which violation shall occur prior to receipt of the Certificate of Completion granted pursuant to Section 304 for the last part or parcel of the Property, the Redeveloper shall be responsible, jointly and severally with the transferee, for curing or effecting the cure of such violation. If the Redeveloper shall fail or refuse to effect such cure, the Authority may institute such actions or proceedings against the transferee and/or the Redeveloper as the Authority deems appropriate, including actions and proceedings to compel specific performance.

e. After completion of the Improvements, as certified by the Authority, the Redeveloper may assign or otherwise transfer

its entire interest in the Property, unless expressly prohibited by the provisions of this Agreement and the Plan.

f. At any time after delivery of the Deed, the Redeveloper may enter into a ground lease for all or any portion of the Property, to facilitate the construction and financing of the Improvements which ground lease shall be subject to the terms and conditions of this Agreement applicable thereto..

g. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 402: Mortgage of Property by the Redeveloper

a. Notwithstanding any other provisions of this Agreement, the Redeveloper and any occupant of the Property or portion thereof shall at all times have the right, without the consent of the Authority, to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion or portions thereof, by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Redeveloper or any occupant to finance the development, construction, repair or reconstruction of the Improvements or any part thereof required to be constructed by the Redeveloper on the Property by the Plan and this Agreement, or to refinance any outstanding loan or loans therefor obtained by the Redeveloper or any occupant for any such purpose.

b. The holder of any such mortgage (including a holder who obtains title to the Property or any portion thereof by foreclosure or action in lieu thereof, but not including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder) shall not be obligated by this Agreement to construct or complete the Improvements or to guarantee such construction or completion, but shall have the options described in Section 403.

c. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 403: Rights and Duties of Mortgagee Upon Acquisition Prior to Completion

a. If a mortgagee of the Redeveloper, through the operation of its contract to finance the Improvements or a part thereof required by this Agreement to be constructed by the Redeveloper, or by foreclosure, acquires title to the Property or any part thereof that was covered by the mortgagee's mortgage prior to the completion of such Improvements, such mortgagee shall have the following options:

1. complete construction of such portion of the Improvements in accordance with the approved Design Documents, the Site Plan attached hereto as Exhibit D, the Plan and this Agreement, and in all respects comply with the provisions of this Agreement; or

2. sell, assign, or transfer, with the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed, title to the Property or any part thereof to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Redeveloper under this Agreement in respect of such portion of the Improvements, by written instrument satisfactory to the Authority and recorded forthwith in the Suffolk County Registry of Deeds.

3. reconvey fee simple title to the Property or part thereof to the Authority, in which event the provisions of Section 802 relative to resale shall apply.

b. In the event that a mortgagee elects to complete construction pursuant to (a)(1) above, or sells, assigns or transfers the Property pursuant to (a)(2) above, the Authority shall extend the time limits set forth in Section 303 herein as shall be reasonably necessary to complete construction of the Improvements, and upon such completion, the mortgagee or purchaser, as the case may be, shall be entitled to a Certificate of Completion pursuant to Section 304.

c. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 404: Rights and Duties of Mortgagee Upon Acquisition After Completion

If a mortgagee, through the operation of its contract to finance the Improvements required by this Agreement to be constructed by the Redeveloper on the Property, or by foreclosure acquires the mortgage or title to the Property or any portion thereof that was covered by the mortgagee's mortgage after completion of such Improvements, the mortgagee for the period during which said mortgagee holds such title shall comply with any applicable provisions of this Agreement.

ARTICLE V PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 501: Maintenance and Operation of Improvements

The Redeveloper shall, at all times until the expiration of

the term of the Plan, keep the Improvements constructed on the Property in good and safe condition and repair unless such Improvements shall have become uninsurable, and in the occupancy, maintenance and operation of such Improvements, the Property shall comply with the terms and conditions of the Plan and with all applicable Legal Requirements.

Section 502: Additions or Subtractions to Completed Improvements

After the Improvements required by the Plan and this Agreement to be constructed by the Redeveloper on the Property or any portion thereof have been completed, and except as provided in Section 302 with respect to the approval process for Future Development at the Property, the Redeveloper shall not, until the expiration of the term of the Plan, reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or change the materials, design, dimensions or color thereof, if such reconstruction, demolition, subtraction, addition, extension or change will affect in any significant way the external appearance of open spaces, landscaping, or any building (including roof and penthouse) without the prior written approval of the Authority. In the event the Redeveloper shall fail to comply with the foregoing requirement, the Authority may within a reasonable time after its discovery thereof, direct in writing that the Redeveloper so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended or changed without the prior written approval of the Authority. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition, extension or change until such directive is complied with. Any such reconstruction, demolition, subtraction, addition, extension or change undertaken pursuant to the prior written approval of the Authority shall in all respects be in accordance with and conform to, the provisions of the Plan.

ARTICLE VI
INDEMNIFICATION

Section 601: Indemnification by Redeveloper

a. In the event of a Redeveloper default hereunder, the Redeveloper shall pay all reasonable costs and expenses and the amounts of all judgments and decrees which may be incurred by the Authority in any proceedings initiated to enforce the obligations of the Redeveloper set forth in this Agreement; provided, however, that the Redeveloper shall only be required to pay the Authority's reasonable costs and expenses and the amounts of all judgments and decrees which may be entered if the Authority is the prevailing party in any such proceeding brought by the Authority.

b. It is expressly understood, however, that the mortgagee under any mortgage permitted hereunder shall not be liable to the Authority for any costs, expenses, judgments, decrees or damages which shall have accrued against the Redeveloper except that any mortgagee which becomes a mortgagee and acquires title to the Property, or any portion thereof, after the Redeveloper has become liable for any costs, expenses, judgments, decrees or damages, shall be liable for such liabilities.

ARTICLE VII INSURANCE

Section 701: Insurance Coverage

a. The parties acknowledge Harvard's intention to insure the Property and the Improvements constructed thereon through a combination of insurance procured from a third party insurance carrier rated by the Alfred M. Best Company, Inc. at A+ or better, and self-insurance.

b. Until the expiration of the term of the Plan, the Redeveloper shall keep the Property and the Improvements constructed thereon, insured by fire and extended insurance and additional risk insurance to the same extent and amount as is customarily procured by the Redeveloper for its similar properties within the City of Boston. Such insurance (whether third party, self-insurance, or a combination of both) shall be in an amount sufficient to comply with any co-insurance clause applicable to the location and character of the Property, and, in any event, in amounts not less than eighty percent (80%) of the current cash value of the Property and the Improvements constructed thereon.

c. To the extent they are available, the Redeveloper shall provide certificates of its insurance policies, and any renewals thereof with respect to the Property and the Improvements constructed thereon, to the Authority within ten (10) days of a written request therefor by the Authority.

d. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 702: Insurance Notices

a. Until the expiration of the term of the Plan, the Redeveloper shall provide thirty (30) days' prior written notice to the Authority of any cancellation, change or termination of the insurance policies referenced in Section 701(b) hereof.

b. The provisions of this Section shall survive the

issuance of a Certificate of Completion for all or any portion of the Property.

Section 703: Evidence of Insurance

a. Until the expiration of the term of the Plan:

i. If the Redeveloper shall provide written notice pursuant to Section 702 hereof of a cancellation, change or termination of the insurance policies referenced in Section 701(b), the Authority may request evidence from the Redeveloper that the Property and any Improvements constructed thereon will be insured (through a third party insurance carrier, self-insurance, or a combination of both), as provided in Section 701(b). The Redeveloper shall provide such written evidence within ten (10) days of a written request therefor by the Authority; and

ii. If the Redeveloper at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to Section 701(b), (whether through a third party carrier self-insurance, or a combination of both), or refuses to provide evidence of the same pursuant to Section 703(a), the Authority, at its option, may procure such insurance, and all amounts paid therefor by the Authority shall be payable by the Redeveloper to the Authority, with interest thereon at the rate of twelve percent (12%) from the date the same were paid by the Authority, to the date of payment thereof by the Redeveloper. The Authority shall notify the Redeveloper by written notice within ten (10) days, of the date, purposes, and amounts of any payments made by it pursuant to this Section.

b. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 704: Redeveloper's Obligations with Respect to Restoration and Reconstruction

a. Until the expiration of the term of the Plan, whenever any Improvements, or any part thereof, constructed on the Property shall have been substantially damaged or destroyed, the Redeveloper shall proceed promptly to fully repair or reconstruct the Improvements which have been destroyed or substantially damaged to a condition at least comparable to that

existing at the time of such substantial damage or destruction, to the extent the Redeveloper deems it economically feasible to do so.

b. Notwithstanding the preceding paragraph (a), the Redeveloper may determine that all or any part of any such substantial damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired and will notify the Authority that it will proceed in accordance with paragraph below.

c. Any reconstruction or substantial repair undertaken pursuant to the provisions of this Section shall, in all respects, be in accordance with and conform to the provisions of the Plan and the provisions of this Agreement, and shall be deemed "Future Development" that is subject to the provisions of Section 304(e) hereof.

d. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 705: Commencement and Completion of Reconstruction

a. Until the expiration of the term of the Plan, and to the extent the Redeveloper deems it economically feasible to do so, the Redeveloper shall commence to reconstruct or repair any Improvements and equipment on the Property, or any portion thereof, which have been destroyed or substantially damaged prior to the expiration of the term of the Plan, within a period not to exceed six months after the insurance or other proceeds with respect to such destroyed or substantially damaged property have been received by the Redeveloper or any mortgagee (or, if the conditions then prevailing require a longer period, such longer period as the Authority may specify in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair, if undertaken, to be completed within thirty-six months after the start thereof.

d. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

ARTICLE VIII

RIGHTS AND REMEDIES IN EVENT OF BREACH BY REDEVELOPER

Section 801: Failure or Refusal by Redeveloper to Purchase Fee Simple Title and Accept Possession

If the Redeveloper shall fail or refuse to complete the purchase and accept possession of the Property upon proper

tender of conveyance by the Authority pursuant to this Agreement, the Authority's rights with respect to the Deposit held by it shall be governed by the provisions of Section 203(b) of this Agreement, and the foregoing shall be the Authority's sole remedy at law and equity.

Section 802: Consequence of Breach by Redeveloper With Respect To Commencement and Completion of Construction, Failure to Discharge Encumbrances, or Unauthorized Transfers of Interest

If, at any time prior to the completion of the Improvements:

a. The Redeveloper shall fail to perform its obligations under Section 303 of this Agreement with respect to the commencement, diligent prosecution, or completion of construction of the Improvements; or

b. There is, in violation of Sections 401(a) or 401(b) of this Agreement, a transfer of the Property or any part thereof;

then, in either such event, the Authority shall have the right to notify the Redeveloper in writing of such failure or violation. The Redeveloper shall thereupon have ninety days from the receipt by it of such written notice to cure such failure or violation.

If the Redeveloper does not cure such failure or violation within the 90-day period (or within such extended period of time as may be established by the Authority in its discretion, such discretion to be reasonably exercised), and if the holders of record of loan agreements with respect to the Property and/or first mortgages in replacement thereof do not exercise their rights to cure such violation or failure (as provided in Section 804 hereof), the Authority shall have the right to: (i) require the Redeveloper to promptly transfer possession of and reconvey the Property, together with all of the Improvements thereon, to the Authority without cost to the Authority by Quitclaim Deed; provided, however, that such reconveyance: (i) shall be subject to any existing loan agreements with respect to the Property and mortgages thereon permitted under this Agreement, and (ii) shall not include any portion of the Property for which a Certificate of Completion has been issued pursuant to Section 304.

c. In the event of a failure to cure within the specified grace period under this Section, the Authority shall have the right to re-enter and take possession of the Property and to terminate (and re-vest in the Authority) the estate conveyed by the Deed to the Redeveloper, it being the intent of this, together with other provisions of this Agreement, that the conveyance of the Property to the Redeveloper shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of such failure to cure, the

Authority at its option may declare a termination in favor of the Authority of the title and of all the rights and interests in the Property, and that such title and all rights and interest of the Redeveloper and any assigns or successors in interest in the Property shall revert to the Authority; provided, that such condition subsequent and any revesting of title as a result thereof in the Authority: (i) shall always be subject to and limited by and shall not defeat, render invalid, or limit in any way the lien of any mortgage authorized by this Agreement, or any rights or interests provided herein for the protection of the holders of such mortgages; and (ii) shall not apply to portions of the Property with respect to which a Certificate of Completion has been issued pursuant to Section 304.

d. If the Redeveloper or a mortgagee reconveys to the Authority, pursuant to this Section 802 or Section 403, or if the Authority shall re-enter pursuant to this Section 802, the Authority shall undertake with due diligence to resell the Property so reconveyed or which it has so re-entered, and the Improvements thereon, subject to all of the provisions of the Plan; and the proceeds of such resale, together with the net income, if any, derived by the Authority from its operation and management of the Property subsequent to such reconveyance shall be used.

First: to reimburse the Authority for all costs and expenses reasonably and proximately incurred by the Authority in connection with the recapture, management and resale of the Property and all administrative and overhead costs in connection therewith;

Next: to reimburse the Authority for expenditures made or obligations incurred with respect to the making or completion of improvements on or for the Property for which it has not otherwise been reimbursed;

Next: to pay payments in lieu of taxes, public charges or other sums owing to the City with respect to the Property up to the time of such resale; and

Finally:

1. In their respective order of priority, to pay any and all mortgage indebtedness authorized by this Agreement and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Property, in favor of mechanics, materialpersons or subcontractors;

2. To pay or reimburse the Authority for any amounts otherwise owing to the Authority from the Redeveloper;
3. If there is any balance of proceeds remaining, to use the balance of the proceeds to reimburse the Redeveloper for, and up to the amount expended by it, in the purchase and improvement of the Property less any profit theretofore realized by the Redeveloper from the disposition of any interest in the Property or in any individual part or parcel thereof, and any income realized by the Redeveloper from its use of the Property or such part or parcel; and
4. Any balance remaining shall remain the property of the Authority.

e. The right of the Authority hereunder to require the Redeveloper to reconvey the Property shall be the Authority's sole and exclusive remedy for a breach by the Redeveloper of the Redeveloper's obligations under Section 303(b) of this Agreement. With respect to breaches by the Redeveloper of any other of its obligations under this Agreement, the Authority shall have all remedies provided by law, including the right to specific performance, except as otherwise expressly provided in this Agreement.

Section 803: Notices of Breaches to Mortgagees

If the Authority gives written notice to the Redeveloper of a default under this Agreement, the Authority shall forthwith furnish a copy of the notice to each of the mortgagees of record of the Property permitted under this Agreement. To facilitate the operation of this Section, the Redeveloper shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees and holders of any loan agreements from whom the Redeveloper has obtained loans as permitted under this Agreement. Any such mortgagee or holder may notify the Authority of its address and request that the provisions of Section 907 as they relate to notices apply to it. The Authority agrees to comply with any such request.

Section 804: Mortgagee May Cure Breach of Redeveloper

If the Redeveloper has received notice from the Authority of a default under this Agreement and such breach is not cured by the Redeveloper before the expiration of the period provided therefor, the holders of record of any loan agreements with respect to the Property or any mortgages on the Property, as permitted under this Agreement, may cure any such breach upon

giving written notice of their intention to do so to the Authority within ninety days after such holder receives such notice of breach, and shall thereupon proceed with due diligence to cure such breach.

Section 805: Intentionally Omitted

Section 806: Equal Employment Opportunity Compliance

During the construction of the Improvements, Harvard or any party holding title under it shall be subject to the provisions of the Authority's "Equal Opportunity Compliance Policy."

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 901: Obligations and Rights and Remedies Cumulative and Separable

The respective rights and remedies of the Authority, the City of Boston, and the Redeveloper, whether provided by this Agreement or by law, shall be cumulative, and except as otherwise expressly provided herein, the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other such rights or remedies.

Section 902: Finality of Approvals

a. Where, pursuant to this Agreement, any document or proposed action by the Redeveloper is submitted by it to the Authority, and the Redeveloper has been notified in writing by the Authority that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the Authority with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

b. Where the consent, permission or approval of the Authority is required by this Agreement, such consent, permission or approval shall not be unreasonably withheld or delayed.

Section 903: How Agreement Affected by Provisions Being Held Invalid

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the requirements of applicable laws, and all agreements entered into pursuant thereto, and of the Plan.

Section 904: Covenants to be Enforceable by Authority and United States

a. The covenants herein contained, which are expressed to be covenants running with the land, shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the Property or any portion thereof or any interest therein, and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Authority (and the United States in the case of the covenants provided in Section 301(a)(2) hereof) against the Redeveloper (including its successors and assigns to or of the Property or any part thereof or any interest therein and any party in possession or occupancy of the Property or any part thereof). In amplification, and not in restriction of the provisions hereof, it is intended and agreed that the Authority shall be deemed a beneficiary of the covenant provided in Section 301(a)(2) hereof, without regard to whether the Authority or the United States has at any time been, remains or is an owner or in possession of any land to, or in favor of, which the covenants relate.

b. It is the intention of the Authority that the benefit of the covenants running with the land which are contained in or referred to in any instrument of conveyance relating to the Property shall be enforceable only by the Authority (and the United States in the case of the covenant provided in Section 301(a)(2) hereof) and those holding title to an interest in the Property, and that such covenants shall not be enforceable by transferees of other land owned by the Authority in the area covered by the Plan, nor by any other party.

Section 905: Parties Barred From Interest in Project

No member of the Congress of the United States of America shall be admitted to any share or part hereof, or to any benefit to arise therefrom.

Section 906: Authority's Members and Officers Barred from Interest

a. No member, official or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement or the Redeveloper, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which s/he is, directly or indirectly, interested. No

member, official or employee of the Authority shall be personally liable to the Redeveloper or any successor in interest in the event of any default or breach by the Authority or for any amount which may become due to the Redeveloper or to its successors, or of any obligations under the terms of this Agreement.

b. After the date hereinabove first written, the Redeveloper shall not, without a prior finding by the Authority that such action is consistent with the public interest, employ in connection with its obligations under this Agreement, any person who was employed by the City or Authority and who has participated in the planning or execution of the transaction contemplated by this Agreement and who is named on any list which may be furnished by the Authority to the Redeveloper within three (3) months of the Closing Date, as having so participated, or permit any such person to directly or indirectly acquire an interest in the Property prior to the completion of the Improvements thereon in accordance with this Agreement and the Plan.

c. The Redeveloper represents and warrants that other than Boston Properties, Inc., it has not employed or retained any company or person (other than a full-time bonafide employee or independent contractor working for the Redeveloper) to solicit or secure this Agreement, and that other than to Boston Properties, Inc., it has not paid or agreed to pay any company or person any percentage or brokerage fee that is contingent upon or shall result from the execution of this Agreement.

Section 907: Approvals and Notices

a. Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, permissions, authorizations, determinations, satisfactions, or waivers are required or permitted, such approvals, permissions, authorizations, determinations, satisfactions, or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the Authority or Redeveloper, and shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the principal office of the party to whom it is directed, which is as follows:

Redeveloper: Harvard Medical School
25 Shattuck Street
Boston, MA 02115
Attn: David M. Bray
Executive Dean for Administration

Authority: Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201
Attention: Director

with a copy to: Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201
Attention: Chief General Counsel

The Authority hereby represents and warrants that as of the date hereof, the duly authorized officer of the Authority with respect to this Agreement is the Director of the Authority. The Redeveloper hereby warrants that any party designated in writing by the Dean of the Harvard Medical School shall be deemed a duly authorized officer of the Redeveloper for the purposes of this Agreement.

b. The parties shall promptly notify each other of any change of their respective addresses set forth above.

c. Notice and other communications to mortgagees and holders of any loan agreements with respect to the Property shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the last known address of the party concerned. Any requests for approvals made by the Redeveloper to the Authority where such approvals shall be deemed granted after a period of non-reply by the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in boldface type:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY.
FAILURE TO RESPOND WITHIN _____ BUSINESS DAYS SHALL RESULT
IN AUTOMATIC APPROVAL."

Section 908: Matters to be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 909: Obligations to Continue

Except as to obligations to be performed at or prior to the time of closing of the sale and conveyance of fee simple title to and delivery of possession of the Property, the provisions of this Agreement shall survive the time of closing and the sale and conveyance of fee simple title to and the delivery of

possession of the Property to the Redeveloper, but shall not survive issuance of any Certificate of Completion by the Authority except to the extent stated herein or in the Deed.

Section 910: Excusable Delays

For the purposes of any of the provisions of this Agreement, neither the Authority nor the Redeveloper, as the case may be, shall be considered in breach of or default in its obligations with respect to the preparation of the Property for redevelopment, or the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the federal and state government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, freight embargoes, and unusually severe weather or delays of sub-contractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Authority with respect to the preparation of the Property for redevelopment or of the Redeveloper with respect to construction of the Improvements, as the case may be, shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this Section shall, within a reasonable period after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any financing difficulty be a cause for an extension hereunder.

Section 911: Agreement Binding on Successors and Assigns

a. The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors and assigns of Harvard and the public body or bodies succeeding to the interests of the Authority, and to any subsequent grantees of the Property.

b. Neither the Redeveloper nor any successor in title to all or any portion of the Property shall be liable for any breach hereof accruing after the period during which it was owner of the Property, except, with regard to the interest conveyed pursuant to Subsection (c) of Section 401 of this Agreement, such liability shall cease only upon issuance of the Certificate of Completion pursuant to Section 304 of this

Agreement. No holder of any mortgage on the Property shall be deemed to be the owner thereof until it shall have foreclosed the mortgage thereon or shall have acquired title by deed in lieu of foreclosure.

c. The Authority agrees to look only to the Property in the event of any breach by the Redeveloper of its obligations hereunder.

d. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 912: Amendment of Plan; Zoning Actions

a. Until the later of (A) the expiration of the term of the Plan; or (B) the payment of the Contingent Price:

1. No modification or amendment to any provisions of the Plan proposed or made effective subsequent to the date of execution hereof shall be effective with respect to the Property, unless such modification or amendment of the Plan has been consented to in writing by the Redeveloper, and every party entitled to be given notice under Section 803 of the Plan has been sent such notice; and
2. The Authority agrees that so long as the Redeveloper owns any portion of the Property, the Authority will not initiate any proposed zoning action that would have the effect of either: (i) making any use of the Property which is permitted pursuant to Sections 301(a) and 301(b) herein a non-conforming use; or (ii) reducing the floor area ratio (FAR) allowed as-of-right at the Property or within the U* District shown on Exhibit C attached hereto, to less than 3.0, or both (i) and (ii).

b. The parties acknowledge that it is intended that the use and dimensional controls on the Property set forth in Section 301(b) hereof and the re-zoning action referenced in Section 204(c)(i) hereof shall continue in full force and effect after the expiration of the term of the Plan.

c. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 913: Waivers

Any right or remedy which the Authority or the Redeveloper may have under this Agreement, or any of its provisions, may be

waived in writing by the Authority or the Redeveloper, as the case may be, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Redeveloper of a right under Sections 801 or 802 shall be effective unless approved in writing by everyone then entitled to be given notice under Section 803.

Section 914: Entire Agreement

Subject to the provisions of 209(a) hereof, this Agreement constitutes the entire agreement and conditions of the transaction provided for herein, and may not be modified except in writing executed by both of the parties named herein. This Agreement supersedes and replaces in its entirety the "Land Disposition Agreement" dated May 14, 1993 executed by the parties named herein.

Section 915: Approvals

a. Subject to the provisions of Section 209(a) hereof, upon the execution of this Agreement, all development review procedures and requirements set forth in the "Request for Proposals" for the Property dated April 20, 1993 and issued by the Authority, shall be deemed to have been fully satisfied and approved.

b. At such time as the Redeveloper has filed a building permit application with the City of Boston Inspectional Services Department for construction of the Improvements (such application to be in accordance with the Design Proposal as approved by the Authority and the Design Documents), the Authority shall promptly issue a consistency finding in the customary form for issuance of a building permit.

c. The filing of the Institutional Master Plan amendment by the Redeveloper with respect to the Property on _____, 1993 shall be deemed to have satisfied the requirements of Article 27M-8A of the Boston Zoning Code.

d. The provisions of this Section shall survive the issuance of a Certificate of Completion for all or any portion of the Property.

Section 916: Captions; Rules of Construction

The captions in this Agreement are for convenience of reference only and shall not define or limit the contents of this Agreement nor be used in construing this Agreement. Unless repugnant to the context, the words "Authority" and "Redeveloper" appearing herein shall be construed to refer to the person or persons, natural or corporate, named above as

Authority or as Redeveloper, as the case may be, and the heirs, executors, administrators, successors, and assignees of such person or persons and those claiming through or under them or any of them. References to an Article include all Sections of the Article; references to a Section (e.g., Section 301) include all subsections (e.g., 301(a), 301(b)) thereof. In this Agreement: (a) the use of the terms "include," "includes," or "including" means "include without limitation," "includes without limitation," or "including without limitation," respectively, as the case may be; (b) the word "or" is used in its inclusive sense, i.e., when the word "or" is used in this Agreement to describe a result occasioned by the occurrence of any multiple specified events or conditions, the result shall also be occasioned by the occurrence of more than one of the events or conditions, unless the context otherwise indicates; (c) "may" is used in the permissive sense, creates discretionary authority, and does not impose a duty; (d) "shall" is used in the imperative sense and imposes a duty; (e) a statement or definition followed by a listing of examples shall not invoke ejusten generis, i.e., the examples are descriptive only and shall not limit the generality of the statement or definition; and (f) where a general category is described by specific examples introduced by "including," the listing of the specific examples shall not be interpreted to be exhaustive.

Then personally appeared before me the above-named Paul L. Barrett, who executed the foregoing Agreement on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Boston

1993

Then personally appeared before me the above-named _____, being the _____ of Harvard Medical School, who executed the foregoing Agreement and acknowledged the same to be the free act and deed of said Harvard Medical School.

Notary Public
My commission expires:

IN WITNESS WHEREOF, on the _____ day of _____, in the year 1993, at Boston, Massachusetts, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively.

Approved as to form:

BOSTON REDEVELOPMENT
AUTHORITY

(Corporate Seal)

Assistant General Counsel
Boston Redevelopment Authority

By: _____
Paul L. Barrett, Director

HARVARD MEDICAL SCHOOL

By: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston _____, 1993

Then personally appeared before me the above-named Paul L. Barrett, who executed the foregoing Agreement on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority.

Notary Public
My commission expires:

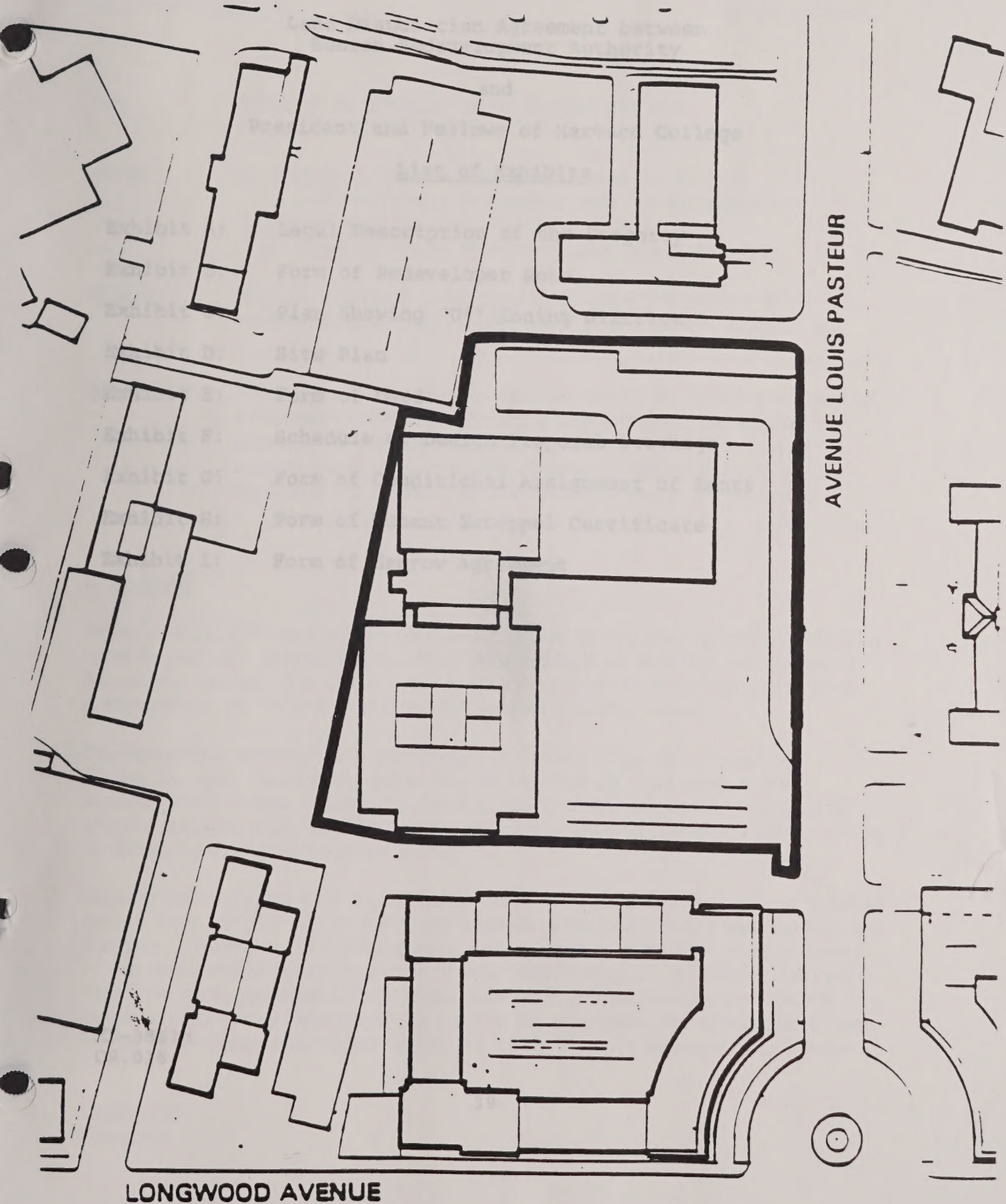
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Boston _____, 1993

Then personally appeared before me the above-named _____, being the _____ of Harvard Medical School, who executed the foregoing Agreement and acknowledged the same to be the free act and deed of Harvard Medical School.

Notary Public
My commission expires:

Fenway Parcel 24



MEMORANDUM
AUGUST 16, 1993
Land Disposition Agreement between
Boston Redevelopment Authority

and

TO: BOSTON REDEVELOPMENT AUTHORITY AND
President and Fellows of Harvard College

FROM: BEVERLEY JO... DIRECTOR FOR
INSTITUTIONAL PLANNING AND DEVELOPMENT
List of Exhibits

- Exhibit A: Legal Description of the Property
Exhibit B: Form of Redeveloper Note
Exhibit C: Plan Showing "U*" Zoning District
Exhibit D: Site Plan
Exhibit E: Form of Deed
Exhibit F: Schedule of Design Proposal Drawings
Exhibit G: Form of Conditional Assignment of Rents
Exhibit H: Form of Tenant Estoppel Certificate
Exhibit I: Form of Escrow Agreement

Background
At the July 28, 1993 meeting, the Board was requested to authorize staff to execute a Land Disposition Agreement with a Final Designation to be defined until remaining issues are resolved. The Board voted to take the matter under advisement to allow additional time for the review of documents pertinent to this request.

The Authority is seeking the redevelopment of Fenway Disposition Parcel 24, 77 Avenue Louis Pasteur, the former English High School. The goals of the redevelopment include meeting the pressing needs of the Longwood Institutions for medical research space and the creation of construction and permanent jobs available for Boston and neighborhood residents.

Harvard University, the sole respondent to the BRA's solicitation, proposes to renovate the ten story, 257,800 square foot tower element of the property to create the Harvard Institutes of Medicine. The development is planned as a biomedical research facility for Harvard Medical School and three of its affiliated hospitals. In addition, Harvard is interested in the development's potential to foster corporate research partnerships.

Because of its strong response to the goals of the solicitation, Harvard University was designated developer on May 13, 1993. It is now appropriate to exercise a

XP-9867h
CR.018

MEMORANDUM

AUGUST 16, 1993

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR

FROM: BEVERLEY JOHNSON, ASSISTANT DIRECTOR FOR
INSTITUTIONAL PLANNING AND DEVELOPMENT
RICHARD GARVER, DEPUTY DIRECTOR FOR
INSTITUTIONAL PLANNING AND DEVELOPMENT

SUBJECT: EXECUTION OF A LAND DISPOSITION AGREEMENT WITH
HARVARD UNIVERSITY - FENWAY DISPOSITION PARCEL 24

SUMMARY: This project was taken under advisement by the Board at the July 28, 1993 meeting. Harvard University was tentatively designated developer of Fenway Parcel 24 on May 13, 1993. It is now appropriate to execute a Land Disposition Agreement with a final designation to be deferred until remaining issues are resolved.

Background

At the July 28, 1993 meeting, the Board was requested to authorize staff to execute a Land Disposition Agreement with a Final Designation to be deferred until remaining issues are resolved. The Board voted to take the matter under advisement to allow additional time for the review of documents pertinent to this request.

The Authority is seeking the redevelopment of Fenway Disposition Parcel 24, 77 Avenue Louis Pasteur, the former English High School. The goals of the redevelopment include meeting the pressing needs of the Longwood institutions for medical research space and the creation of construction and permanent jobs available for Boston and neighborhood residents.

Harvard University, the sole respondent to the BRA's solicitation, proposes to renovate the ten story, 251,600 square foot tower element of the property to create the Harvard Institutes of Medicine. The development is planned as a biomedical research facility for Harvard Medical School and three of its affiliated hospitals. In addition, Harvard is interested in the development's potential to foster corporate research partnerships. Because of its strong response to the goals of the solicitation, Harvard University was tentatively designated developer on May 13, 1993. It is now appropriate to execute a

more detailed Land Disposition Agreement establishing the terms for conveyance of the project.

Progress Toward Final Designation

The University has made presentations on the project in both the Mission Hill and Fenway neighborhoods. These meetings have revealed a limited number of issues associated with the proposal. Both neighborhoods have expressed concerns with the number of parking spaces requested in the proposal and with traffic circulation patterns created in conjunction with the project. Both neighborhoods have sought to further define the community benefits which the project would generate. Harvard University is preparing responses to these issues and will return to both communities with these responses prior to Final Designation and conveyance of the property.

The Land Disposition Agreement

In view of the limited number of issues associated with the project, it is now appropriate to authorize the Director to enter into a Land Disposition Agreement establishing the basic terms of the conveyance. The agreement stipulates that the community benefits associated with the project will be specified in a Cooperation Agreement to be executed at the time of conveyance of the property. The number of parking spaces and circulation requirements will be established prior to conveyance.

Recommendation

It is recommended that the Authority authorize the Director to enter into a Land Disposition Agreement with Harvard University concerning the terms of conveyance of Fenway Disposition Parcel 24. Final Designation and conveyance will occur only after resolution of remaining issues.

An appropriate Resolution is attached.